Supreme Court, U.S.
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NO. 95-2037

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1995

EDWARD PICKLESIMER,

Petitioner,

v.

LEE COX,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

SHOULD THIS COURT DENY MR. PICKLESIMER'S REQUEST FOR A WRIT OF CERTIORARI BECAUSE HE FAILS TO PRESENT A DECISION IN CONFLICT WITH A DECISION OF ANOTHER UNITED STATES COURT OF APPEALS OR OF THE NORTH CAROLINA APPELLATE COURTS?

DID THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT CORRECTLY UPHOLD THE DISTRICT COURT'S GRANT OF SUMMARY JUDGMENT FOR MS. COX?

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LIST OF THE PARTIES

A. Petitioner/Plaintiff: Edward Picklesimer

B. Respondent/Defendants: Lee Cox, Individually; Rex Yates, In his representative capacity; State of North Carolina; Administrative Office of the Courts, Juvenile Services Division

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NO. 95-2037

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1995

EDWARD PICKLESIMER,

Petitioner,

v.

LEE COX,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION

The Respondent Lee Cox in her individual capacity respectfully requests that the Court deny the Petition for Writ of Certiorari, seeking review of the United States Court of Appeals for the Fourth Circuit's opinion in this case.

Assuming arguendo, Mr. Picklesimer sought appeal in the Fourth Circuit of the dismissal of: Lee Cox (official capacity), Rex Yates (official capacity), the State of North Carolina and the Administrative Office of the Courts. These

defendants, also, respectfully request that the Court deny the Petition for Writ of Certiorari. The district court decision was unreported. The United States Court of Appeals for the Fourth Circuit's decision was an affirmance by unpublished per curiam opinion. (Petition A.1 - A.4)

STATEMENT OF THE CASE

A. Nature of the Case and Proceedings Below

Mr. Picklesimer initiated this suit against: Ms. Lee Cox, in her individual and official capacity as his supervisor; Mr. Rex Yates, in his official capacity as Western Area Administrator of the Administrative Office of the Courts, Juvenile Services Division; the Administrative Office of the Courts; and the State of North Carolina. Mr. Picklesimer was employed as a juvenile counselor by the State of North Carolina, Juvenile Services Division of the Administrative Office of the Courts. Over a period of time prior to his resignation, Mr. Picklesimer filed grievances with the Administrative Office of the Courts alleging "improper actions" taken by Ms. Cox. After an administrative review of his record, Mr. Picklesimer was offered a transfer to another judicial district. Mr. Picklesimer declined the transfer, thereby terminating, of his own accord, his employment with the State.

A significant time later, Mr. Picklesimer brought this suit alleging that he was "unjustly terminated" from his employment with the State of North Carolina, Administrative Office of the Courts, Juvenile Services Division. Mr. Picklesimer contends that his history of disagreements with Ms. Cox caused him to file grievances within the Administrative Office of the Courts which Mr. Picklesimer

alleges amounted to speech protected under the First and Fourteenth Amendments. Mr. Picklesimer contends that Ms. Cox singled him out for termination as a "direct and proximate result of [his] exercising his freedom of speech . . . ." Mr. Picklesimer further contends that Ms. Cox "[s]ystematically engag[ed] in a plan to cause [his] termination or transfer . . . without just cause[,]" and made derogatory comments concerning his competence and ability to perform his duties as a juvenile counselor, thereby, intentionally inflicting mental and emotional distress.

Chief Judge Voorhees dismissed, by Memorandum and Order of Dismissal filed January 21, 1994, all of Mr. Picklesimer's claims against the State, the Administrative Office of the Courts, Mr. Yates and Ms. Cox in their official capacities, and all of Mr. Picklesimer's claims for punitive damages, permitting only the claims against Ms. Cox in her individual capacity to go forward. Ms. Cox filed a motion for summary judgment, to which Mr. Picklesimer failed to respond. Magistrate Judge Davis, noting Mr. Picklesimer's failure to respond, nonetheless engaged in a detailed analysis of the law. After the Memorandum and Recommendation was filed, Mr. Picklesimer's counsel, claiming a clerical error in docketing the time for response, requested leave to file a response to Ms. Cox's motion for summary judgment and to file objections to the Memorandum. The District Court allowed Mr. Picklesimer to file late responses to Ms. Cox's motion for summary judgment. Mr. Picklesimer's untimely submissions were considered in ruling on Mr. Picklesimer's objections.

The District Court conducted a *de novo* review of that portion of the Memorandum and Recommendation to which objections were filed, pursuant to 28 U.S.C. § 636(b). In

conducting this review, the District Court considered Mr. Picklesimer's responses to Ms. Cox's motion for summary judgment. By Judgment dated February 2, 1995, Chief Judge Voorhees dismissed all of Mr. Picklesimer's remaining claims against Ms. Cox in her individual capacity. Mr. Picklesimer appealed the Judgment of February 2, 1995 which dismissed all of the remaining claims against Ms. Cox in her individual capacity. On March 19, 1996, the Fourth Circuit issues an affirmance by unpublished per curiam opinion.

Pursuant to Rule 15(2) of the Rules of the Supreme Court, Ms. Cox in her official capacity, Mr. Yates, the State of North Carolina and the Administrative Office of the Courts notify the Court that they contend that Mr. Picklesimer's request for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit is not a cognizable attack on their Federal Rules of Civil Procedure, Rule 12(b) dismissals.

B. Factual Background

Mr. Picklesimer was employed by the State of North Carolina, Administrative Office of the Courts, Juvenile Services Division, as a juvenile counselor. In 1991, he was offered a transfer to another judicial district. He declined to accept this juvenile counselor position and left employment with the State. Several years later, he brought suit alleging that his history of disagreements with his second level supervisor, Ms. Cox, caused him to file grievances within the Administrative Office of the Courts which amounted to protected speech. Ms. Picklesimer claimed his transfer, which he characterized as a termination, violated his free

speech rights. He also accused Ms. Cox of intentional infliction of emotional distress.

Ms. Cox is the Chief Court Counselor for a three-county area. She supervises two lead court counselors who in turn supervise the district s eight court counselors. On January 14, 1991, Ms. Cox wrote her supervisor Area Director Yates and detailed Mr. Picklesimer's failure to meet Minimum Standards which are the absolute minimum standards of acceptable service to be provided in a child's case. For example, Mr. Picklesimer had: dropped juveniles from his active case load and not provided service despite court orders of active probation; failed to schedule regular contacts; failed to redirect an inappropriate adult charge for juvenile services processing; failed to respond to the Interstate Compact on Juveniles concerning their request for supervision or provide reports on the juvenile's progress. Mr. Yates indicated termination was the appropriate course of action. Ms. Cox is not authorized to dismiss an employee and only recommended dismissal after her immediate supervisor, Mr. Yates, informed her this was the appropriate course of action. Despite Ms. Cox's recommendation and the recommendation of the Juvenile Service's Division Director, Dr. Thomas Danek, for dismissal, Mr. Picklesimer was not dismissed. Mr. Picklesimer terminated his own employment when he refused a transfer out of Ms. Cox's district to the Twenty-First District which was offered by the Assistant to the Director of the Administrative Office of the Court's.

Mr. Picklesimer raised two grievances during Ms. Cox's tenure as his second level supervisor. Both concerned his purely personal personnel situation. One involved Ms. Cox's refusal to allow him to inspect her personal notes

about him as an employee. The second incident involved Mr. Picklesimer maintaining that as his supervisor and his supervisor's supervisor, Ms. Cox was not authorized to communicate with him directly. Ms. Cox had sent a memorandum to Mr. Picklesimer reminding him that he was to notify her in writing of outside employment after the Lenoir office received a copy of a student's test. Mr. Picklesimer explained that the test was a make-up and he was not currently teaching at the local community college. The explanation was accepted without question and the memorandum did not appear in his personnel file.

Ms. Cox's interaction with Mr. Picklesimer was viewed by other juvenile service co-workers as a professional working relationship. Ms. Cox praised Mr. Picklesimer when he performed well and recommended him for merit increases on the five occasions he was eligible. Ms. Cox's concern was for the children in the court system. She noted Mr. Picklesimer's failings in a constructive, interactive manner when he failed to meet Minimum Standards. In addition to her fair minded appraisals that produced merit increases for Mr. Picklesimer and the always professional interaction observed by the Juvenile Services staff, Ms. Cox accommodated all of Mr. Picklesimer's light duty assignment requests.

Mr. Picklesimer was treated fairly by Ms. Cox. Her dealings with him were as his direct or second level supervisor. Her attempts were always aimed at trying to have Mr. Picklesimer deliver an acceptable level of service to the children whose lives were touched by Juvenile Service's supervision.

REASONS WHY THE PETITION SHOULD BE DENIED.

I. MR. PICKLESIMER HAS FAILED TO EVEN ALLEGE APPROPRIATE GROUNDS FOR GRANTING A PETITION FOR WRIT OF CERTIORARI. MR. PICKLESIMER MERELY STATES THE DISTRICT COURT AND CIRCUIT COURT SHOULD HAVE FOUND THAT MATERIAL ISSUES OF FACT EXIST IN THIS CASE.

Supreme Court Rule 10 denominates considerations governing review on certiorari. Rule 10 lists three reasons considered by the Court in exercising its discretion. Although Rule 10 does not control the Court's discretion, it is clear Mr. Picklesimer by merely focusing on his desire for a different result, in his unpublished case, does not present the Court with a decision in conflict with the decision of another United States court of appeals. *See,* SUP. CT. R. 10(a), 28 U.S.C.

As applied by the Court, the principal purpose for certiorari jurisdiction is to resolve conflicts among circuit courts of appeals. *Braxton v. U.S.*, 500 U.S. 344, 347-48, 111 S. Ct. 1854, 1857, 114 L. Ed. 2d 385, 391 (1991). Mr. Picklesimer does not present, or even allege, a conflict between circuits. He merely argues that the summary judgment motion should have been decided differently. As the Court previously held: ". . . it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties and in cases where there is a real and embarrassing

conflict of opinion and authority between the circuit court of appeals." *Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393, 43 S. Ct. 422, 423, 67 L. Ed. 712, 714 (1923) *quoted in, Rice v. Sioux City Memorial Parks Cemetery*, 349 U.S. 70, 79, 75 S. Ct. 614, 620, 99 L. Ed. 897, 904 (1955). Mr. Picklesimer alleges no conflict and does not show why this unpublished case concerning his personal, personnel situation decided by the Fourth Circuit without oral argument involves matters important to anyone besides the parties to this case.

Mr. Picklesimer's Petition for Writ of Certiorari should be denied because appropriate grounds for granting the petition do not exist. This case involves a purely personal, personnel dispute that was appropriately decided by the lower courts.

II. THE CIRCUIT COURT CORRECTLY UPHELD THE DISTRICT COURT'S GRANT OF SUMMARY JUDGMENT.

Even assuming for arguments sake that the Court overlooks the fact Mr. Picklesimer is only disputing the result in his case, instead of pointing to a real and embarrassing conflict between the circuits, the fact remains that the lower courts correctly allowed summary judgment for Ms. Cox. First, the district court correctly applied § 1983 free speech case law. Citing *Connick v. Myers*, the circuit court correctly concluded that Mr. Picklesimer's claims involved purely personal, internal grievances. *Connick v. Myers*, 461 U.S. 138, 154, 103 S. Ct. 1684, 1694, 75 L. Ed. 2d 708, 724 (1983). In reaching this decision, the circuit court conducted a *de novo* review of the district court's grant of summary judgment. The circuit

court properly concluded that "[Mr. Picklesimer's] grievance to [Ms.] Cox's superiors related to Cox's 'failure as a supervisor, her inadequacies in administrative duties and her personal attacks on [him].'" Since these complaints did not involve matters of public concern the circuit court, citing *Connick*, determined a First Amendment claim was not established. *See*, *Connick*, 461 U.S. at 154. (Petition A.3) The circuit court following *Connick* and the district court's reasoning found as a matter of law that Mr. Picklesimer's complaints about Ms. Cox expressing disdain for her leadership and managerial skills both to her and her superiors were as a matter of law expressions that were not public but instead concerning employee grievances. The internal complaints did not constitute protected free speech. (Petition A.3; A.8, *citing*, *Stroman v. Colleton County School Dist.*, 981 F. 2d 152, 156 (4th Cir. 1992)) Mr. Picklesimer's complaints were personal to him and internal to his employer's organization.

Second, the circuit court applying North Carolina infliction of emotional distress tort law properly determined Plaintiff Picklesimer had not established extreme and outrageous conduct exceeding all bounds of societal decency. *Citing, e.g.*, *Wilson v. Bellamy*, 105 N.C. App. 446, 414 S.E.2d 347, *review denied*, 331 N.C. 558, 418 S.E.2d 668 (1992). Mr. Picklesimer does not allege North Carolina law was improperly applied by the circuit court or that this decision creates a conflict with North Carolina appellate decisions. He instead, urges the Court to improve his situation by finding summary judgment was inappropriate.

CONCLUSION

For these reasons, Mr. Picklesimer's Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit should be denied.

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July 18, 1996

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APPENDIX

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U.S. SUP. CT. R. 10, 28 U.S.C. 1a

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U.S. Sup. Ct. Rule 10, 28 U.S.C.

Rule 10. Considerations Governing Review on Certiorari

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

IN THE
UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
(SHELBY DIVISION)
FILE NO. 4:93CV74

Edward Picklesimer,	)	
	)	
Plaintiff,	)	
	)	
v.	)	AFFIDAVIT IN SUPPORT
	)	OF MOTION FOR
Lee Cox, Individually,	)	SUMMARY JUDGMENT
and in her represen-	)	
tative capacity, Rex	)	
Yates, in his representa-	)	
tive capacity, State of	)	
North Carolina and the	)	
Administrative Office of	)	
the Courts, Juvenile	)	
Services Div.,	)	
	)	
Defendants.	)	

LEE N. COX, being duly sworn deposes and says:

1. I am employed by the North Carolina Administrative Office of the Courts Juvenile Services Division as a Chief Court Counselor II for the Twenty-Fifth District Court District.

2. The Twenty-Fifth District comprises Burke, Caldwell and Catawba counties with offices located in Lenoir, Morganton, Hickory and Newton.

3. I have been employed as a Chief Court Counselor since November 1, 1975.

4. In my capacity as Chief Court Counselor II, I supervise two lead Court Counselors who in turn supervise the district's eight Court Counselors. I am, in turn, supervised by an Area Administrator.

6. Eddie Picklesimer was employed by the Twenty-Fifth District on January 1, 1976.

7. From January 1, 1976 to April 15, 1988 and October 1989 to May 1, 1990, I was his immediate supervisor .

8. From April 15, 1988 to October 1989 his immediate supervisor was Marion Brewer.

9. From May 1, 1990 to March 28, 1991 his immediate supervisor was Rudolph Turbeville.

10. Court Counselor is the state classification for the job performed by Eddie Picklesimer.

11. Court Counselors may hold different working titles: court counselor, intake counselor, intensive services counselor, alternatives to detention counselor or training school specialist.

12. Whatever the Court Counselor's working title, they are all classified in the state system as a court counselor, hold the same state classification and are subject to having their job duties rotated among the various working titles.

13. When Mr. Picklesimer started work with the Twenty-Fifth District, he functioned under the intake counselor working title for all three counties. On May 1, 1976, another counselor was hired. She started functioning as the intake counselor for Catawba County on June 1, 1976.

14. Mr. Picklesimer functioned under the working title of intake counselor until November 15, 1988.

15. From Nov. 15, 1988 to March 1, 1990, Mr. Picklesimer functioned as the Training School Specialist.

16. From September 5, 1989 to October 31, 1989, Mr. Picklesimer held an interim light duty assignment.

17. From November 1, 1989 to March 1, 1990, Mr. Picklesimer functioned as a training school specialist.

18. A court counselor's assignment to a particular job function, intake counselor, court counselor or training school specialist within a district requires the ultimate approval of the Area Administrator.

19. Each of Mr. Picklesimer's job assignments with accompanying working title was approved by the Area Administrator after September 1984. Prior to September 1985, changes in working titles were approved by the Administrator or Assistant Administrator.

20. Assigning Mr. Picklesimer to the working title of training school specialist and moving him from the role of intake and court counselor for Burke County was at the impetus of the Area Administrator, Mr. Rex Yates.

21. Mr. Picklesimer had a persistent and constant problem with keeping records current. For example, his August 4, 1978 evaluation noted he was fair at keeping his records current. This evaluation was subsequently upgraded to average. Mr. Picklesimer did not contest the assessment. His June 11, 1979 evaluation rated him as only average at keeping up with his dictation. The rating was subsequently upgraded to good in December 1979. Mr. Picklesimer did not contest the rating. Formal evaluations were not performed from July 13, 1981 to November 1985. When an evaluation was performed on April 28, 1986, I noted that Mr. Picklesimer's paperwork still needs attention. Mr. Picklesimer did not contest this assessment. On Mr. Picklesimer's April 24, 1987

evaluation, I noted that many of Mr. Picklesimer's comments about certain aspects of his work were negative and I would like to see as change in his attitude and comments. On Mr. Picklesimer's October 15, 1987 evaluation, I noted that Mr. Picklesimer was not following the new procedures well and was not timely completing dictation. He did not contest his rating. On his April 11, 1988 evaluation I noted that he was doing an unacceptable job of keeping up his dictation. His April 12, 1989 evaluation similarly stated that the quality of his work was poor.

22. His last evaluation was done verbally in 1991 by his direct supervisor, Rudolph Turbeville, with handwritten notations in pencil. It was never signed by anyone. The Area Administrator, my supervisor, instructed me not to complete this evaluation. He informed me the evaluation would be completed by the Chief Court Counselor in the Twenty-first district where Mr. Picklesimer was being transferred.

23. Administrative Office of the Court employees other than Supreme Court Justices, Court of Appeals Judges, the Appellate Defender and the AOC Director are employees at will. This is clearly laid out in the AOC Personnel Management Manual in Section 3.20. (Attached as Exhibit 1) I reviewed this fact with the District Twenty-Five employees at a staff meeting held on June 17, 1988. The minutes memorializing this staff meeting were given to Mr. Picklesimer.

24. On January 14, 1991, I wrote to Rex Yates, the Area Administrator and detailed Mr. Picklesimer's failure to meet Minimum Standards in several cases under his control. (Attached as Exhibit 2) Note: the copy filed in the Clerk's office has been redacted. The juveniles are referenced by initials only. The court has also been provided an unedited version for in camera review. The plaintiff has been provided both a redacted and an unedited copy of the memorandum.

25. Minimum Standards are the absolute minimum amount of acceptable service to be provided by the court counselor in a child's case. In my memorandum, I asked my supervisor whether "action under Personnel Management Manual Section 7, top of page 7.4 is applicable or if another action is more advisable."

26. I was advised by, Mr. Yates, the Area Administrator and my supervisor that because of the severity of Mr. Picklesimer's documented failure to meet Minimum Standards, that termination was the appropriate course of action.

27. I concurred with Mr. Yates' assessment and memorialized it in a recommendation to him dated February 4, 1991. (Attached as Exhibit 3)

28. During the week of December 14, 1990 our office received a letter from Interstate Compact regarding, MN, an interstate probationer requesting a report.

29. An investigation by Mr. Turbeville, Mr. Picklesimer's direct supervisor, revealed the following:

(a) Mr. Picklesimer ceased to provide services and dropped MN's case from his active caseload in July 1990 when in fact the court had ordered the juvenile to remain on active probation.

(b) Mr. Picklesimer failed to schedule regular contact with the probationer as required by the division's Minimum Standards.

(c) Mr. Picklesimer was aware that the juvenile had been inappropriately charged with a new offense, as an adult, yet made no attempt to redirect the complaint to Juvenile Services for appropriate processing.

(d) Mr. Picklesimer did not respond to the Interstate Compact on Juveniles concerning their request for supervision or provide reports on the juvenile's progress.

(e) No documentation was provided, by Mr. Picklesimer, on his contacts with the juvenile.

(f) Because of Mr. Picklesimer's multiple failures, and effectively removing the juvenile from supervision on his own initiative in contravention of a court order, the juvenile was not held responsible for payment of restitution at a time he could pay (Memorandum from Rudolph Turbeville to Lee Cox dated January 7, 1991, attached as Exhibit 4)

29. MN was not the only juvenile effectively dropped from supervision by Mr. Picklesimer. CS, a juvenile was placed on probation for one year beginning November 2, 1989. Rich Bruder acted as counselor through the last recorded entry on March 8, 1990. The case was accepted for supervision by Mr. Picklesimer in April 1990. Mr. Picklesimer circumvented the judge's order of probation by terminating the case from his list of active cases before the June 1990 review. Probation was allowed to expire with no service by Mr. Picklesimer between March 8, 1990 and the end of the probation order: November 1, 1990. Mr. Picklesimer admitted to his direct supervisor, Ruby Turbeville, that he never saw the juvenile. (See, Exhibit 4 attached; Note: the copy filed in the clerk's office has been redacted. The juveniles are referenced by initials only. The court has, also, been provided an unedited version for in camera review. the plaintiff has been provided both a redacted and an unedited copy of the memorandum)

30. The KO case was transferred from court counselor Robbins to Mr. Picklesimer in March 1990. The case was withheld from records review by Mr. Picklesimer after April 12, 1990 and protective supervision was allowed to terminate on July 12, 1990 without any document and service and with the case being withheld from as supervisor's review by Mr. Picklesimer. KO would have benefited from intervention by a court counselor. KO was again submitted for supervision on October 9, 1990 on a new intake petition. The juvenile was again placed on protective supervision on November 15, 1990.

31. Mr. Picklesimer's actions in withholding cases from review, failing to provide service to juveniles and acting as if he was above the court by dropping juveniles from supervision while an order of probation was outstanding caused me to ask the Area Administrator what course of disciplinary action to pursue.

33. I only recommended Mr. Picklesimer's dismissal after my immediate supervisor informed me this was the appropriate course of action.

34. I am not authorized to dismiss an employee.

35. Despite my recommendation and the recommendation of the Juvenile Service Division Director, Dr. Thomas Danek, for dismissal, Mr. Picklesimer was not dismissed.

36. Mr. Picklesimer terminated his own employment when he refused a transfer out of my district to the Twenty-First District which was offered to him by Bob Atkinson, the Assistant to AOC Director Freeman. (See, Exhibit 5)

37. During Mr. Picklesimer's employment with the Twenty-Fifth District I never violated any of his rights to free speech or stifled his agency grievances.

38. Mr. Picklesimer raised two grievances during my tenure as his second level supervisor.

39. Both grievances concerned his purely personal personnel situation.

40. On October 9, 1990 Mr. Picklesimer filed a grievance with his immediate supervisor, Rudolph Turbeville, expressing a problem with a memorandum I sent him on July 23, 1990 (July 23, 1990 Memorandum and student test papers attached as Exhibit 6) and my subsequent refusal to allow him to inspect my personal notes concerning him as an employee.

41. Despite knowing his official personnel file was located in Raleigh, he maintained I was obligated to allow him to inspect my purely personal notes on his performance as an employee.

42. Mr. Picklesimer further maintained I, as his supervisor and his supervisor's supervisor, was not authorized to communicate directly with him. Mr. Picklesimer maintained my July 23, 1990 memo violated his perception of a chain of command in AOC.

43. In my July 23, 1990 memorandum to Mr. Picklesimer with a copy to his direct supervisor, I did nothing more than remind him that he was to notify me in writing of outside employment. When our Lenoir office received a copy of a student's test, I thought Mr. Picklesimer may have started teaching a new class without providing AOC notice of the place, dates, times and duration of the class.

44. Mr. Picklesimer explained he was not currently teaching a class at the local Community College and the student was sending in a make-up test. I accepted his explanation without question. He asked if my July 23rd memorandum (Attached as Exhibit 6) would appear in his personnel file. I indicated it would not and it did not.

45. I thought nothing more of my July 23, 1990 memorandum, or my refusal to let a subordinate employee review my personal notes, until I received a memorandum from Rudolph Turbeville, attached as Exhibit 7), forwarding a grievance memorandum dated October 9, 1990 from Mr. Picklesimer (attached as Exhibit 8)

46. I replied to Mr. Picklesimer by memorandum dated November 1, 1990 (attached as Exhibit 9)

47. My supervisor, the Area Administrator, replied to him on November 19, 1990 (attached as Exhibit 10)

48. Mr. Picklesimer requested further review of Mr. Yates' decision in a letter dated December 26, 1990. (attached as Exhibit 11)

49. Mr. Yates forwarded Mr. Picklesimer's request to Dr. Danek, the Administrator of the Juvenile Services Division, which was forwarded to Mr. Hill, the Personnel Director for AOC.

50. Mr. Hill again affirmed the propriety of denying Mr. Picklesimer access to my personal notes.

51. Mr. Freeman, the Director of AOC, accepted the recommendation.

52. Mr. Picklesimer's complaint was purely about his personal situation. I did not violate Mr. Picklesimer's constitutional rights by directly reminding him of the need to notify his primary employer if he took outside employment. Similarly I feel a subordinate, although always entitled to access to his official personnel file, cannot force a supervisor to disclose her personal notes against her will.

53. On November 15, 1988, Mr. Picklesimer was assigned the job duties of a Training School Specialist.

54. This transfer was the idea of the Area Administrator and was undertaken to create a more positive image for the Juvenile Services Division in Burke and Caldwell counties.

55. Shortly after Mr. Picklesimer assumed the Training School Specialist role, he received a catheter related to his cholesterol problem. Complications apparently developed and Mr. Picklesimer had an operation on December 7, 1988. He was

cleared to return to work in March of 1989 without restrictions. (See Exhibit 12 attached)

56. In March 1989, Mr. Picklesimer worked part-time and was assigned to Burke and Caldwell counties as Training School Specialist. In April 1989 Mr. Picklesimer returned full-time to his job duties as a Training School Specialist.

57. Mr. Picklesimer indicated he could not perform the job duties of a Training School Specialist and requested he be allowed to act as Court Counselor for Burke County alone or act as the Burke County Intake Counselor with a one-half caseload in Burke County.

58. On May 3, 1989 Mr. Picklesimer's physician provided the attached note. (Exhibit 13)

59. I forwarded Mr. Picklesimer's request and Dr. Richardson's note to, the Area Administrator, Rex Yates. Mr. Yates authorized me to make the accommodations listed in my memorandum dated June 6, 1989. I, also, discussed short and long term disability options with Mr. Picklesimer.

60. Mr. Picklesimer maintained he had no disability and refused the accommodations I was authorized, at that point, to extend.

61. Subsequently, I was authorized to allow Mr. Picklesimer to basically remain in the Burke county office and coordinate a workshop for the staff as a special light duty assignment.

62. On October 19, 1989, I asked Mr. Picklesimer his intentions for the month of November 1989. He indicated he was planning to resume his regular duties on November 1, 1989.

63. I was authorized as a result of the agreed settlement of Mr. Picklesimer's grievance in September, 1989 by Rex Yates (attached as Exhibit 14) to allow him to perform a special light duty assignment until November 1, 1989.

64. After November 1, 1989 Mr. Picklesimer could obtain month to month continuation of the special light duty assignment upon medical verification.

65. Mr. Picklesimer understood the requirements of continuing on the special assignment. He reiterated his intention to return to his job duties as the Training School Specialist on November 1, 1989. He, also, stated that he knew a doctor would not say he could not return to his regular job assignment.

66. Mr. Picklesimer never submitted any medical documentation except what is attached as Exhibits 13 and 14.

67. Although not classifiable as a grievance, Mr. Picklesimer complained to my supervisor, Rex Yates, about my failure to adequately check his work on the Juvenile R.C. before a records review on June 5, 1987.

68. I indicated that I had reviewed some of Mr. Picklesimer's cases for the June 5, 1987 records review when they had in fact not been reviewed. (Exhibit 18)

69. I indicated Mr. Picklesimer had met Minimum Standards of service on these cases without conducting a proper records review to determine if Mr. Picklesimer had in fact provided acceptable service and met Minimum Standards.

70. If a proper check had occurred it would have actually revealed yet another failure by Mr. Picklesimer to meet Minimum Standards or adequately document his efforts.

71. Mr. Picklesimer did not suffer any adverse consequences from my failure to adequately review his work before the June 5, 1987 records review. In fact, my failure to catch Mr. Picklesimer's failings only enhanced his rating at the June 5, 1987 records review.

72. I was counseled by my supervisor Rex Yates to review every case file before indicating my subordinate was adequately performing.

73. I did not suffer any adverse job consequences for my failure to point out Mr. Picklesimer's inadequacies on the June 5, 1987 records review.

74. Mr. Picklesimer did not suffer any adverse job consequences for reporting to Mr. Yates that I had not adequately checked his work on the juvenile R.C. case before the June 5, 1987 records review.

75. That my dealings with Mr. Picklesimer were in my representative capacity as his supervisor.

76. That I never engaged in a course of conduct or even an isolated individual act with the purpose of causing Mr. Picklesimer emotional distress.

77. My comments to and appraisals of Mr. Picklesimer were directly related to his performance as a Court Counselor.

78. When Mr. Picklesimer performed well, I praised him. When he failed to meet Minimum Standards of service, to the juvenile population we serve, I noted his failings in a constructive, interactive manner.

79. My suggestions for improvement and my dismay at Mr. Picklesimer's defiance of court orders, by dropping children

from supervision and failing to provide court ordered service, was always delivered to him in a professional manner.

80. Mr. Picklesimer was eligible for merit increases on five occasions. I rated him on all of those reviews. I recommended him for an increase on January 1, 1977, January 1, 1978, January 1, 1979, January 1, 1980, and February 1, 1981. My evaluation of Mr. Picklesimer's work was always fair.

81. Mr. Picklesimer did not dispute my ratings or ever accuse me of causing him emotional distress or acting towards him in other than a professional manner.

82. Mr. Picklesimer's only grievances were as detailed in paragraph number 38 through paragraph 66.

83. I do not think my fair minded appraisal of Mr. Picklesimer caused his heart problems.

84. Mr. Picklesimer's heart problems were caused by his consistently poor dietary habits.

85. Mr. Picklesimer indicated, to me, that the reason he was required to undergo heart surgery was because of his cholesterol problems, brought on by his inappropriate diet.

86. Mr. Picklesimer's heart problems pre-existed any purported problem with me. His evaluation from December 13, 1976 noted that he "has recently had what the doctor terms a mild heart attack and has had to be hospitalized twice for this condition which was previously unknown."

87. To my knowledge Mr. Picklesimer never received any psychological treatment. His only prolonged absence from work was when he was recovering from surgery.

88. As stated under paragraphs 18 through 20 above, Mr. Picklesimer's changes in duty assignments (e.g. Court

Counselor to Training School Specialist) were at the impetus of, or approval of my supervisor.

89. Mr. Picklesimer's duty assignments were not unduly heavy and were entirely appropriate for a Court Counselor of his experience and length of service.

90. Mr. Picklesimer was accommodated with light duty assignments as long as a physician certified the need for continued light duty. From September 5, 1989 to October 31, 1989, Mr. Picklesimer basically did nothing more than coordinate a one-day presentation to the District Twenty-five staff.

91. Mr. Picklesimer was treated fairly by me. I acted towards him in a professional manner. My dealings with him were as his direct or second level supervisor. My attempts were always aimed at trying to have Mr. Picklesimer deliver an acceptable level of service to the children whose lives were touched by Juvenile Service's supervision.

Further, affiant sayeth not.

S/_____
Lee N. Cox

Subscribed and sworn to before me
this the 23rd day of May, 1994.

S/ Nancy C. Storie
(Notary Public)

My commission expires: April 12, 1999

(Notary Seal)